

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

PROGRESSIVE INTERNATIONAL
CORPORATION,

Plaintiff,

v.

BLYTH, INC. and MILES KIMBALL
COMPANY,

Defendants.

Civil Action No.

COMPLAINT FOR PATENT
INFRINGEMENT

JURY DEMANDED

Plaintiff Progressive International Corp. (“Progressive”) alleges as follows against
Defendants Blyth, Inc. (“Blyth”) and Miles Kimball Company (“Miles Kimball”).

Parties

1. Progressive is a corporation organized and existing under the laws of the state of
Delaware and having a place of business in Kent, Washington.

2. Blyth is a corporation with company headquarters at 1 East Weaver Street,
Greenwich, Connecticut 06831.

3. Miles Kimball is a Wisconsin corporation having a place of business at 41 West
8th Avenue, Oshkosh, Wisconsin 54906. Upon information and belief, Miles Kimball is a wholly
owned subsidiary of Blyth.

Jurisdiction and Venue

4. This action arises under the patent laws (35 U.S.C. §§ 271, 281, and 289). Accordingly, original jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Blyth describes itself as one of the leading marketers of home décor products, with locations spanning the globe. Blyth refers to Miles Kimball and Walter Drake as brands used by Blyth for the sale of household goods.

6. Miles Kimball describes itself, though a website operated by Blyth, as a leading direct marketer of consumer gifts and household products, operating from a primary location in Wisconsin. Miles Kimball products are sold under the Miles Kimball brand, as well as the Walter Drake brand and others. At www.mileskimball.com, Miles Kimball offers a wide variety of household items for sale using a shopping cart model. Products are broadly directed to all consumers directly across the United States, including within this judicial district. Blyth and Miles Kimball know and intend to reach consumers generally across the United States, including those located in Western Washington. Miles Kimball also distributes catalogs broadly across the United States in order to facilitate direct marketing of its household goods, mailing as many as 55 million catalogs in a single year.

7. Miles Kimball operates a similar home products website at www.wdrake.com, again operating a website offering products and using a shopping cart model enabling consumers to select and purchase goods directly from the website.

8. Blyth, though its subsidiary Miles Kimball, has sold products within this district that infringe Progressive's patent rights as alleged below. The infringing products were purchased by the defendants with the knowledge and intent that they would be sold through catalog orders resulting from nationwide catalog distribution, as well as through direct orders from consumers accessing the Miles Kimball websites, including from consumers located in

1 Western Washington. Blyth and Miles Kimball are therefore subject to personal jurisdiction in
2 this district.

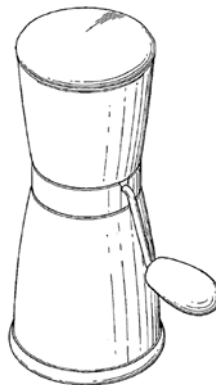
3 9. For purposes of venue, Blyth and Miles Kimball reside in the Western District of
4 Washington pursuant to 28 U.S.C. § 1391(c). In addition, upon information and belief, Blyth
5 and Miles Kimball have sold infringing goods in this district, making venue proper under
6 28 U.S.C. § 1391(b).

7 **Progressive's Patented Nut Chopper**

8 10. Progressive is a leading designer and global marketer of a diversified line of
9 kitchenware and dining products. Operating from its local headquarters in Kent, Washington,
10 Progressive devotes considerable effort towards designing original products for retail sale within
11 the kitchenware and dining industry. Progressive's innovations have resulted in the issuance of
12 hundreds of patents by the U.S. Patent Office and other patent offices around the world.

13 11. One of Progressive's many products is a nut chopper, which resulted in
14 U.S. Patent No. D502,062 (the '062 patent), issued February 22, 2005. The '062 patent is
15 attached as Exhibit 1 and is assigned to Progressive.

16 12. As a design patent, the '062 patent claims the ornamental design for a nut chopper
17 as shown in the patent. Figure 1 from the '062 patent is reproduced below.



13. Progressive has sold a commercial version of its nut chopper, and marked all or substantially all of its commercial products with the number of the patent, D502,062.

Infringement by Blyth and Miles Kimball

14. Blyth and Miles Kimball have offered for sale and sold a nut chopper, including through their catalogs and Internet sites. The infringing nut chopper has been offered and sold as an “Easy Crank Nut Chopper,” through both the Miles Kimball and Walter Drake websites. At each website, the Easy Crank Nut Chopper was offered in a manner in which it could be added to a shopping cart for an offered price of \$9.99, enabling direct purchase and shipment to a customer. The image below at the left has been used on the Walter Drake website, while the image below at the right has been used on the Miles Kimball website. The two products are identical, and are shown with one of the nut choppers rotated somewhat with respect to the other.



15. The Easy Crank Nut Chopper is identical to the nut chopper illustrated and claimed in Progressive’s ‘062 patent. Likewise, it is a virtually identical copy of Progressive’s own commercial embodiment of the ‘062 patent, which is shown below.



16. The Easy Crank Nut Chopper is such a close copy of the Progressive commercial nut chopper that it could only have been produced after having first seen the Progressive nut chopper in an effort to copy it.

17. Blyth and Miles Kimball have directly infringed Progressive's '062 patent by making, using, selling, offering for sale, or importing the Easy Crank Nut Chopper, pursuant to 35 U.S.C. § 271.

18. As a direct result of the infringement by Blyth and Miles Kimball, Progressive has suffered, and will continue to suffer, damages in an amount to be established at trial.

19. Blyth was aware of Progressive's '062 patent before the filing of this complaint. In view of the close copy between the Easy Crank Nut Chopper and the Progressive patent, discovery is expected to show that the Easy Crank Nut Chopper was copied directly from the Progressive product. In addition, Progressive informed the defendants about the Progressive patent and the infringement in a letter directed to Blyth and dated May 1, 2013. Despite that notice letter and subsequent direct communications, the Easy Crank Nut Chopper is still offered for sale and sold through at least the Walter Drake website as of the time of filing the present complaint. The Defendants have no good faith basis to continue to offer for sale and sell the infringing product, and have never articulated such basis to Progressive. Accordingly, the infringement by Blyth and Walter Drake has been and continues to be willful or at least objectively reckless in view of the continued sale despite awareness of the Progressive '062 patent.

Request for Relief

Progressive requests that the Court grant the following alternative and cumulative relief:

1. Preliminarily and permanently enjoin Blyth and Miles Kimball from making, using, offering for sale, selling, or importing products that infringe the '062 patent, including at least the Easy Crank Nut Choppers;

2. Award Progressive damages for the infringement, including, at Progressive's option, the greater of the total profits earned by Blyth and Miles Kimball for the infringement or a reasonable royalty for the use of the invention;
3. Award Progressive treble damages pursuant to 35 U.S.C. § 284 and any other applicable law;
4. Enter an award of reasonable attorneys' fees pursuant to 35 U.S.C. § 285 and any other applicable law;
5. Order Blyth and Miles Kimball to deliver to Progressive its inventories of infringing articles for destruction by Progressive;
6. Enter an award of prejudgment interest and costs; and
7. Other and further relief as the Court may deem just and proper.

Jury Demand

Progressive demands a jury trial on all issues triable by jury.

DATED this _____ day of September, 2013.

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